

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI**

BACKPAGE.COM, LLC,)
Plaintiff,) Case No. 4:17-cv-01951
v.)
JOSHUA D. HAWLEY)
Defendant.)

**MEMORANDUM IN OPPOSITION TO MOTION
FOR LEAVE TO FILE FIRST AMENDED COMPLAINT**

“Although leave to amend should be granted freely when justice so requires, it may be denied if an amendment would be futile.” *Stricker v. Union Planters Bank, N.A.*, 436 F.3d 875, 878 (8th Cir. 2006) (citation and internal quotation marks omitted). For the reasons stated in Parts I through III of Defendant’s Memorandum in Opposition to Plaintiff’s Second Motion for Preliminary Injunction, the Court should deny Backpage’s motion for leave to amend because the proposed amendment is futile. The regulation requires persons who advertise illegal prostitution to disclose to other consumers that they do so, and the regulation includes a scienter element. Backpage’s proposed amended complaint is unripe because Backpage asserts that it never knowingly permits third-parties to advertise for illegal prostitution. The Court therefore has no subject-matter jurisdiction over the proposed amended complaint. The proposed amended complaint would also fail for the reasons established in Defendant’s Response and would therefore be subject to dismissal.

Dated: November 27, 2017 Respectfully submitted,

JOSHUA D. HAWLEY
Missouri Attorney General

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CERTIFICATE OF SERVICE

I hereby certify that, on November 27, 2017, the foregoing was served on counsel of record for Plaintiff by operation of the Court's electronic filing system.

/s/ D. John Sauer

D. John Sauer